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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,024	04/30/2008	Valerie Frankard	1187-31	4438
28349 7590 05/14/2010 DILWORTH & BARRESE, LLP 1000 WOODBURY ROAD SUITE 405 WOODBURY, NY 11797				
EXAMINER				
COLLINS, CYNTHIA E				
ART UNIT		PAPER NUMBER		
1638				
MAIL DATE		DELIVERY MODE		
05/14/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/584,024

**Applicant(s)**

FRANKARD ET AL.

**Examiner**

Cynthia Collins

**Art Unit**

1638

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-20 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

**Group I**, claim(s) 3 and 14, drawn to a method for increasing plant yield, said method comprising introducing into a plant a cyclin A nucleic acid molecule, preferably encoding a cyclin A protein, wherein said cyclin A nucleic acid molecule is operably linked to a seed-preferred promoter, wherein said cyclin A protein comprises a motif consisting: of W L V/I E V S/A D/E D/E Y K/R/T L, and to a plant obtainable by said method.

**Group II**, claim(s) 5 and 14, drawn to a method for increasing plant yield, said method comprising introducing into a plant a cyclin A nucleic acid molecule, preferably encoding a cyclin A protein, wherein said cyclin A nucleic acid molecule is operably linked to a seed-preferred promoter, wherein said cyclin A nucleic acid molecule is a cyclin A2, wherein said cyclin A2 comprises a motif consisting of W L V/I E V S/A D/E D/E Y K/R/T L and a motif consisting of E L T L V/I/T/M D/E/M Y T/S/H/P/G F R/L L/R/K/N F L P S, having at least two of residues (--T ..... F---), and to a plant obtainable by said method.

**Group III**, claim(s) 7 and 14, drawn to a method for increasing plant yield, said method comprising introducing into a plant a cyclin A nucleic acid molecule, preferably encoding a cyclin A protein, wherein said cyclin A nucleic acid molecule is operably linked to a seed-preferred promoter, wherein said cyclin A nucleic acid molecule is a cyclin A2, wherein said cyclin A is a variant cyclin A sequence, wherein a variant cyclin A of (i) to (v) of claim 6 is capable of encoding a protein comprising a motif consisting of W L V/I E V S/A D/E D/E Y K/R/T L and a motif consisting of E L I L V/I/T/M D/E/M Y T/S/H/P/G F R/L L/R/K/N E L P S, having at least two of residues (--T ..... F--F--), and to a plant obtainable by said method.

**Group IV**, claim(s) 8 and 14, drawn to a method for increasing plant yield, said method comprising introducing into a plant a cyclin A nucleic acid molecule, preferably encoding a cyclin A protein, wherein said cyclin A nucleic acid molecule is operably linked to a seed-preferred promoter, wherein said cyclin A nucleic acid molecule is a cyclin A2, wherein said cyclin A is a variant cyclin A sequence, wherein said variant cyclin A of (vi) of claim 6 comprises a motif consisting of W L V/I E V S/A D/E D/E Y K/R/T L and a motif consisting of E L T L V/I/T/M D/E/M Y T/S/H/P/G F \_ R/L L/RIK/N F. L P S, having at least two of residues (--T ..... F--F--), and to a plant obtainable by said method.

**Group V**, claim(s) 9, 10 and 14, drawn to a method for increasing plant yield, said method comprising introducing into a plant a cyclin A nucleic acid molecule, preferably encoding a cyclin A protein, wherein said cyclin A nucleic acid molecule is operably linked to a seed-

preferred promoter, wherein said seed-preferred promoter is a promoter active in the endosperm, including a prolamin promoter, and to a plant obtainable by said method.

**Group VI**, claim(s) 13 and 14, drawn to a method for increasing plant yield, said method comprising introducing into a plant a cyclin A nucleic acid molecule, preferably encoding a cyclin A protein, wherein said cyclin A nucleic acid molecule is operably linked to a seed-preferred promoter, wherein said plant is selected from rice, maize, wheat, barley, soybean, sunflower, canola, sugarcane, alfalfa, millet, barley, rapeseed, sorghum and cotton, and to a plant obtainable by said method.

**Group VII**, claim(s) 15-17, drawn to a construct comprising a nucleic acid encoding a protein comprising a motif consisting of W L V/I E V S/A D/E D/E Y K/R/T L.

**Group VIII**, claim(s) 18-20, drawn to a plant expressing a cyclin A under the control of a seed-preferred promoter.

Claim 1 link(s) inventions I-VI. Claim 2 link(s) inventions I and VI. Claim 4 link(s) inventions II-IV. Claim 6 link(s) inventions II-IV. The restriction requirement between the linked inventions is **subject to** the nonallowance of the linking claim(s), claims 1, 2, 4 and 6. Upon the indication of allowability of the linking claim(s), the restriction requirement as to the linked inventions **shall** be withdrawn and any claim(s) depending from or otherwise requiring all the limitations of the allowable linking claim(s) will be rejoined and fully examined for

patentability in accordance with 37 CFR 1.104 **Claims that require all the limitations of an allowable linking claim** will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Amendments submitted after final rejection are governed by 37 CFR 1.116; amendments submitted after allowance are governed by 37 CFR 1.312.

Applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, the allowable linking claim, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

The inventions listed as Groups I-VIII do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The technical feature linking the inventions of Groups I-VIII is a cyclin A nucleic acid molecule. However, a cyclin A nucleic acid molecule is obvious or anticipated over INZE et al. (WO 01/85946, 15 November 2001) and HELENTJARIS et al. (WO 00/65040, 02 November 2000), and therefore does not constitute a special technical feature as defined by PCT Rule 13.2, because it does not define a contribution over the prior art.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cynthia Collins whose telephone number is (571) 272-0794. The examiner can normally be reached on Monday-Friday 8:45 AM -5:15 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on (571) 272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

Art Unit: 1638

like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Cynthia Collins/  
Primary Examiner, Art Unit 1638

CC